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Professional Liability Insurance and Retirement
Don't Go There Without It!

After years of service, most pharmacists look forward to a relatively carefree retirement which is free of the stress that is part of being constantly at the top of one's professional game. The decision to retire is not always an easy one, however, and the process of shutting down and closing off the cumulative impact of years of work requires careful thought and appropriate action.

It is not possible, for example, to walk away from the risk exposure arising from the thousands of prescriptions that you may have filled, the confidential records that you have handled, or the advice that you have given in the course of your career. You may have retired, you may have been de-registered by the College, you may have completely left active practice behind, but you could still become subject to complaints, allegations or claims that are brought by any of the patients you have treated while you were professionally active.

The Statute of Limitations, which limits the time period in which a legal action for the recovery of damages may be brought, is only applicable to a plaintiff's allegations with respect to a "wrongful act" which has been discovered and reported. It is frequently the case, in pharmacy, that the consequences of a faulty prescription, or defective advice, or of a breach of confidentiality, cannot be immediately known. It may be many years before the resultant injury is made manifest and it is then, and only then, that the Statute of Limitations begins to run its course.

So the retiring pharmacist remains vulnerable indefinitely to any third party injuries, alleged to have occurred as a result of his or her work when professionally active, for as long as they remain undiscovered and unreported.

This latent risk exposure is both significant and troubling, and leads to two questions: First, does the insurance that the pharmacist purchased during his or her active career, or that was purchased on his or her behalf, apply to claims that were incurred during the time that the policies were in force, even though the claim is being reported many months or years later? And second, if not, is there a way of insuring against this exposure in a practical and cost efficient manner?

Any effort to deal with the first question is made complicated by the insurance industry's stubborn tendency to make simple matters muddled and obscure. The answer comes in two parts, since there are two different types of professional liability insurance--those that are based on an "occurrence" coverage trigger; and those that use a "claims made" insurance agreement.

"Occurrence" policies

Many pharmacists will have been covered, some of the time or perhaps all of the time, by a professional liability policy written on an "occurrence" basis. In theory, occurrence policies will respond to conditions giving rise to a

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claim that take place while the policy is in force, although the claim itself may be first discovered and reported long after the policy in question has expired. There are a number of problems, however, that may be associated with this general rule if you are seeking a recovery for an "old" claim that has just been identified.

First, you need to have a personal policy archive so that you know which insurer was at risk, possibly years ago, at the time that the conditions giving rise to the claim first occurred. Many pharmacists will not possess this policy archive, and may not be able to produce the original policy document, or coverage Certificate.

Second, coverage continuity may be broken by "claims made" coverage episodes, breaking the "occurrence" chain.

Third, if an injury occurs over more than one policy period, (and many injuries either gestate or deteriorate over time), and if some of these policy periods are underwritten by different insurers with different limits of liability, it can be difficult, if not impossible, to allocate the claim to a single policy document. At best, this can lead to complex and long drawn out arbitration, and at worst, a failure to provide an insured defence in a timely way, and/or result in a complete denial of any claims recovery.

Claims made policies

In its basic form, a "claims made" professional liability policy will respond to covered claims that arise from an activity that takes place during the term of the policy, provided that the claim is discovered and reported before the policy expires. It is important to note that that the policy may be extended in two very important ways.

First, it can be extended to cover any claim incurred prior to the inception date of the policy, without any limitation with respect to time, provided that it was not previously discovered or reported; and second, *provided that the pharmacist is giving up his or her practice and entering retirement,* there is a second coverage extension, (the Extended Reporting Period coverage, or ERP), which will cover any claim that occurred during or prior to the issue of the policy, but not previously discovered or reported, that occurs after the policy has otherwise expired.

A pharmacist can be sure that he or she has the right protection provided that the last policy purchased before retirement is "claims made", and further provided that it has (a) unlimited retroactivity for coverage of undiscovered claims, and (b) an Extended Reporting Period coverage amendment through which the retiree can report claims generated from their active careers for the next two, three, four, or five years following retirement, or for the full balance of their lifetime.

The ERP generates a single, one time premium payment, and the coverage is non-cancellable. Because the coverage can last up to twenty five years or longer, it is important to know, in these difficult times, that the insurer has a high quality of financial security, and that it possesses a superior Best's rating, (A or better).

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OPA's Professional Liability Program does provide unlimited retroactive coverage for claims not previously known or reported. For pharmacists who are permanently leaving the profession, the retiree can purchase an Extended Reporting Period coverage amendment that is parallel to the examples that we have given.

In conclusion

There is a constant debate, as between "occurrence" and "claims made" policy advocates, as to which is best. In our opinion, both have their merits and demerits, but on the balance of the issues, we believe that the "claims made" form is more sophisticated, more structured and, when suitably endorsed, the only fully reliable and convenient way of securing post-retirement insurance that will be there if, as and when it may be needed.

Retirement is a great destination, and it should be as worry free as possible. Don't go there without an ERP.

For further information, contact:

> HUB International HKMB Limited, Customer Service Representative
> OPA-dedicated phone 1-844-793-4562 or email opa@hubinternational.com

To apply for Extended Reporting Period coverage with your OPA professional liability insurance, contact:

> OPA Insurance Department
> 416-441-0788 or 1-877-341-0788, option 2 or email insurance@opatoday.com